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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/633,842	08/04/2003	Keith Rosiello	18405-127	5671
48329	7590	06/14/2006	EXAMINER	
FOLEY & LARDNER LLP 111 HUNTINGTON AVENUE 26TH FLOOR BOSTON, MA 02199-7610			SORKIN, DAVID L	
			ART UNIT	PAPER NUMBER
			1723	

DATE MAILED: 06/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n No.

10/633,842

Applicant(s)

ROSIELLO, KEITH

Examiner

David L. Sorkin

Art Unit

1723

-- The MAILING DATE of this communication appears n the cover sheet with th correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-6,8,9,11,12 and 14-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3-6, 8, 9, 11, 12 and 14-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Failure to Comply with 37 CFR 1.121(c)

1. The text of cancelled claims should not appear in a claim listing.

Claim Objections

2. Applicant is advised that should claim 1 be found allowable, claim 3 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k). Claim 1 already requires an axial opening in the first side and the second side.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention, because claim 11 depends from a canceled claim.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 3-6, 8, 9, 11, 12 and 14-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Hasselquist (US 2,686,006). Hasselquist ('006) discloses an apparatus comprising a flexible chamber comprising a first side (24) having a an axial opening (22) and a second side (26) having an axial opening (27) and having an expandable wall (10), wherein a first end of the expandable wall is attached to a circumference of the first side of the flexible chamber and a second end of the expandable wall is attached to a circumference of the second side of the chamber, wherein the expandable wall includes at least one pair of corresponding connected partitions (11 and/or 15), including first and second partitions attached to the first and second sides (see Fig. 2).

7. Claims 1, 3-6, 8, 9, 11, 12 and 14-20 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 02/28451. WO ('451) discloses a continuous flow centrifuge (see page 2, lines 5-6) including a plurality of flexible chambers (pluralities of 10 and/or 50 and sets thereof), each first and second sides with axial openings at both sides and an expandable wall (see page 6 line 2 to page 7 line 8), wherein a first end of the expandable wall is attached to a circumference of the first side of the flexible chamber and a second end of the expandable wall is attached to a circumference of the second side of the flexible chamber, wherein the expandable wall includes at least one pair of corresponding connected partitions, including first and second partitions attached to the first and second sides (see Figs 3 and 7).

Response to Arguments

8. Hasselquist (US 2,686,006) expressly states at col. 2 lines 29-32 that "The hollow body 10 has flexible, closed end walls 17 and 18, respectively, each having a central aperture, 19, 20". Mr. Rosiello's testimony to the contrary in paragraph 20 of his declaration is considered to be blatantly false. The axial openings are also shown in Fig. 2.

9. Mr. Rosiello testifies that his *curriculum vitae* is attached, but none has been received.

10. There is no evidence of record to support applicant's statement that "The '451 application ... is a continuation in part of the '505 application". In fact the numbers '451 and '505 are numbers of publications, not applications. The '451 publication does state on the cover page that it is CIP of a "not furnished" application filed on 3 October 2001; however, the '505 application was not filed on this date. The '451 publication lacks any statement in the first paragraph of the specification establishing it as a continuing application. In any case, both publications qualify as prior art under section 102(b).


11. While it may be true regarding WO 02/28451 that the individual sub-bags such as 10 and 50 do not meet the limitations of the instant claims, applicant has not addressed how such sub-bags connected axially (such as the combination of Fig. 3 when assembled) relate to the limitations of the instant claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David L. Sorkin whose telephone number is 571-272-1148. The examiner can normally be reached on 9:00 -5:30 Mon.-Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L. Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


David L. Sorkin
Primary Examiner
Art Unit 1723

DLS